

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 11215 & 11216
[Redacted])	
)	DECISION
Petitioners.)	
)	

On April 26, 1996, the staff of the Field Services Bureau of the Idaho State Tax Commission (Bureau) issued two separate Notices of Deficiency Determination. One to [Redacted], proposing the assignment of corporate income, sales/use, and withholding tax, penalty, and interest in the amount of \$39,808.31 as follows: March 1994-corporate tax; July 1994 through December 1994-sales/use tax; and August 1994 through January 1995-withholding tax. [Redacted] are hereinafter referred to as taxpayers. The Tax Commission, having reviewed the entire file and being fully advised thereof, hereby issues its decision.

The Bureau talked directly with both taxpayers regarding missing tax returns and past due payment of the business's various taxes. Agreement was reached and payments were received from the business to be applied to past due amounts until the structure of the business changed and the payments stopped. Subsequently the corporation filed for bankruptcy reorganization.

The Bureau investigated the business to identify the responsible parties of the business so the liability could be asserted pursuant to Idaho Code §§ 63-3078 and 63-3627. Based on this investigation, the Bureau determined [Redacted] were responsible parties.

Idaho Code § 63-3627 states:

63-3627. Responsibility for taxes -- Corporations, partnerships and limited liability companies. (a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any corporation, partnership or limited liability company under this chapter on behalf of such corporation, partnership or limited liability as an officer, member or employee of such corporation, partnership or limited liability company, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 63-3046(b), Idaho Code, for any offense to which this subsection (b) is applicable.

The taxpayers' legal counsel (attorney) appealed the Notices of Deficiency Determination on behalf of the taxpayers. The attorney contended neither of the taxpayers had control of the company during the periods at issue. The attorney asked for an accounting of the tax amounts included in the deficiency notices.

The Bureau sent the taxpayers the requested information and transferred their files to the Legal/Tax Policy Division for administrative review. The taxpayers were sent a letter advising them of their appeal rights bringing another response from their attorney who enclosed an executed Power of Attorney with his letter. The letter asked for a continuance of an unspecified length of time.

Pursuant to the request, the taxpayers' file was placed in abeyance. Over the course of the next few years and under the direction of the bankruptcy court, corporate assets were sold and monies were distributed to debtors. After considerable delay, the bankruptcy trustee issued the final disbursement from sales of real estate in December 2002. The Tax Commission

received a portion of the final disbursement and applied the monies to the business's tax liabilities. The monies received from seized refunds and the bankruptcy court have retired the business's corporate tax liability and reduced the sales/use and withheld income tax liabilities significantly. Many periods have been fully paid.

On December 17, 2002, the Tax Appeals Specialist wrote to the attorney to advise him the Tax Commission had pulled the taxpayers' files from abeyance and was ready to proceed. The attorney wrote back saying he was checking information. Additional letters were sent and numerous telephone calls were placed to the attorney to no avail. In a telephone conversation on December 30, 2002, the attorney suggested one or both of the taxpayers were considering an offer in compromise. However, to date, no information has been received from either of the taxpayers or their attorney that would refute the Notice of Deficiency Determination issued to them on April 26, 1996.

Records retained by the Tax Commission show the taxpayers were corporate officers, fully recognized by the Idaho Secretary of State, who were listed as such in the application dated November 1987 for an Idaho sales/use and employee-withholding permit for [Redacted]. The corporation filed for bankruptcy on June 8, 1995 and converted the bankruptcy to a complete liquidation on March 25, 1996. The company ceased doing business in Idaho.

In the bankruptcy papers, the taxpayers are listed under a question that instructs the debtor to: "List the name of any person who directly or indirectly owns, controls, or holds with power to vote, 20% or more of the voting securities of debtor." They are also listed in bankruptcy papers as two of three shareholders. Additionally, the taxpayers' signatures appear on checks submitted to the Tax Commission.

The taxpayers have presented nothing that would overcome the presumption of the correctness of the Notices of Deficiency. See Albertson's Inc. v. State, Dept. of Revenue, 106 Idaho 810, 814 (1984) (a determination of the State Tax Commission is presumed to be correct); Parsons v. Idaho State Tax Commission, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986) (a State Tax Commission deficiency notice is presumed to be correct and the burden is on the taxpayers to show that the deficiency is erroneous).

Therefore, in light of the information contained in the file and the applicable law, the Tax Commission finds the deficiency notices are appropriate.

WHEREFORE, the Notices of Deficiency Determination dated April 26, 1996, are hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following sales/use and withholding tax, penalty, and interest for the periods of July 1994 through December 1994 and April, June, and August 1996:

<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$11,309	\$111	\$1,726	\$13,146

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2003.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that I have on this _____ day of _____, 2003, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

[Redacted]
